

**DEPARTMENT OF HEALTH SERVICES
DIVISION OF LICENSING SERVICES
OFFICE OF CHILD CARE LICENSING
#SP-035-DLS-CCL**

**CLARIFICATION OF THE PROVISION, “THAT AFFECTS AGRICULTURAL
LAND REGULATED PURSUANT TO SECTION 3-365” AS STATED IN A.R.S.
§§ 36-882(D) AND 36-897.01(B)**

This substantive policy statement is advisory only. A substantive policy statement does not include internal procedural documents that only affect the internal procedures of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with the Arizona Administrative Procedure Act. If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties, you may petition the agency under Arizona Revised Statutes § 41-1033 for a review of the statement.

The purpose of this substantive policy statement is to clarify the provision, “that affects agricultural land regulated pursuant to section 3-365”, as stated in A.R.S. §§ 36-882(D) and 36-897.02(B).

A.R.S. § 36-882(D) provides that “The [D]epartment shall deny any license that affects agricultural land regulated pursuant to section 3-365, except that the owner of the agricultural land may agree to comply with the buffer zone requirements of section 3-365. If the owner agrees in writing to comply with the buffer zone requirements and records the agreement in the office of the county recorder as a restrictive covenant running with the title to the land, the department may license the child care facility to be located within the affected buffer zone...”

A.R.S. § 36-897.01(B) provides that “The [D]epartment shall deny a certificate that affects agricultural land regulated pursuant to section 3-365, except that the owner of the agricultural land may agree to comply with the buffer zone requirements of section 3-365. If the owner agrees in writing to comply with the buffer zone requirements and records the agreement in the office of the county recorder as a restrictive covenant running with the title to the land, the department may issue a certificate to the child care group home to be located within the affected buffer zone...”

A.R.S. § 3-365 restricts the application of or method of certain pesticides within a quarter mile radius of a child care facility, child care group home, school, or health care institution.

The protection provided by A.R.S. §§ 36-882(D) and 36-897.01(B) is to prevent a child care facility or child care group home from causing an initial impact on the use of pesticide on agricultural land without the landowner’s acquiescence. The Department has

determined that it is unnecessary to require a restrictive covenant when the following circumstances occur.

When an application to the Department is for a child care facility or child care group home in an existing school, health care institution, or current or previously licensed child care facility or child care group home, the issuance of a child care facility license or child care group home certificate does not “affect” the agricultural land because the land is already subject to the restrictions in A.R.S. § 3-365.

Additionally, if an applicant’s proposed child care facility or child care group home site is located next to an existing group home or child care facility, health care institution, school, or a cluster of at least 25 residences, and the issuance of a license or certificate would add no additional restriction to the use of existing agricultural land because the land is already restricted by A.R.S. § 3-365. A child care facility license or child care group certificate does not “affect” agricultural land if the agricultural land is already restricted by A.R.S. § 3-365.

Therefore, the Department has determined that it is unnecessary to require a restrictive covenant when neighboring agricultural land is currently restricted by A.R.S. § 3-365.

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Arizona Department of Health Services
Division of Licensing Services
Office of Child Care Licensing
150 North 18th Avenue, Suite 400
Phoenix, AZ 85007***